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| 09/870,965 | 05/31/2001 | John Lacombe | 1662-30400 JMH (P00-2943) | 9110 |
| 23505 | 7590 | 07/12/2004 | EXAMINER | |
| CONLEY ROSE, P.C. P. O. BOX 3267 HOUSTON, TX 77253-3267 | | | PATEL, NITIN C | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/870,965

Applicant(s)

LACOMBE ET AL.

Examiner

Nitin C. Patel

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. Claims 1 – 24 are presented for examination.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1 – 24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 31 of copending Application No. 09/932,541. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

4. All the elements of claim 1, of current application are identical to the elements of claim 1 of copending application except "protection levels" in the current application and "protection layers" in copending application as one of ordinary skill in art can understand different protection layers provides different level of protection.

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5. All the elements of claim 7, of current application are identical to the elements of claims 7, and 8 of copending application except “restart service to restart that application” in the current application which is identical to “reset command to restart the computer system” in copending application as one of ordinary skill in art can understand that reset command is to provide restart service which can be implied to application or system.

6. All the elements of claim 14, of current application are identical to the elements of claim 16 of copending application except “executing reset service that is configured to terminate and restart one or more applications” in the current application which is identical to “initiates a command to restart the computer system” in copending application as one of ordinary skill in art can understand that execution of reset command provides the execution of restart service which can be implied to application or system.

7. All the elements of claim 21, of current application are identical to the elements of claim 23 of copending application except “protection levels” in the current application and “protection layers” in copending application as one of ordinary skill in art can understand different protection layers provides different level of protection.

8. Claims 2, 3, and 15 of current application are identical to claims 2, and 3 of copending application.

9. Claim 9 of current application is identical to claims 13 of copending application.

10. Claim 10 of current application is identical to claim 31 of copending application.

11. Claim 11 of current application is identical to claims 9 - 14 of copending application.

12. Claim 12 of current application is identical to claims 14 of copending application.

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13. Claim 13 of current application is identical to the reset command in claims 29, and of copending application.
14. Claim 16 of current application is identical to claim 18 of copending application.
15. Claim 17 of current application is identical to claim 18 of copending application.
16. Claim 18, of current application is identical to claim 19 of copending application.
17. Claim 19, of current application is identical to claim 26 of copending application.
18. Claim 20 of current application is identical to resetting of timer to initial value in claim 22 of copending application.
19. Claims 22, and 23 of current application are identical to the reset command in claim 29 and 31 of copending application.
20. Claim 24, of current application is identical to claim 26 of copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Objections

21. Claims 4 – 5, 7, and 19 – 20 are objected to because of the following informalities:
22. Claims 4, and 5 recite the limitation “the restart service” in line 2 on page 16. There is insufficient antecedent basis for this limitation in the claims.
23. Claim 7, recites the limitation “a first IOCTL” on line 6, and “a second IOCTL” on line 8 of page 16. The abbreviation of term “IOCTL” is required or defined at least once in claim.
24. Claim 19, recites the limitation “the watchdog timer” in line 2 on page 20. There is insufficient antecedent basis for this limitation in the claims.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

25. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

26. Claims 1, and 3 – 6 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Dien, US Patent 6,112,320.

27. As to claim 1, Dien teaches a computer system comprising at least one processor [1, CPU], a system memory coupled to said processor [system memory is inherent to the computer system and inherently coupled to processor], wherein the computer system processor is configured to execute:

a. an operating system [operating system is inherent to the computer system] with at least two protection levels [operating mode and safe mode];

b. a watchdog driver [a watchdog program in peripheral controller 2] [col. 2, lines 48 – 50];

c. at least one computer application [watchdog timer function]; and

d. a reset service [reset service is inherent to a reset circuit 4];

wherein the watchdog driver [watchdog program] observes at least one application for periodic message [periodically interrupt] from the application [the watchdog program in controller will interrupt CPU periodically and send a predefined watchdog check command to the CPU, and the watchdog service routine will return a set of watchdog

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check data to the peripheral controller] and wherein if periodic message is not received in a predetermined period of time [the controller will check the data and decide whether the CPU is running normally or a run-away mode and unable to respond], the watchdog driver [watchdog program] instructs the reset service to initiate procedure [if the condition is detected, the peripheral controller will generate a reset signal and reset or reboot the system][col. 1, lines 55 – 67, col. 2, lines 1 – 4, 44 – 65, fig. 1, 2].

28. As to claim 3, Dien teaches computer watchdog timer for computer system, which is inherently having a shared memory queue for message passing interface.

29. As to claims 4, and 5, Dien discloses a reset circuit [4] to reset or reboot the system [fig. 1, 2] for condition detected, therefore he teaches necessary steps involved in reset or reboot too.

30. As to claim 6, Dien discloses a watchdog program with watchdog timer function [watchdog driver] therefore he teaches to establish timer events in operating system scheduler to alert when the predetermined period of time has expired [col. 2, lines 5 – 11].

Allowable Subject Matter

31. Claim 2, is objected to as being dependent upon a rejected base claim, but would be allowable upon filing of a terminal disclosure as well as rewriting of the claim in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nitin C. Patel whose telephone number is 703-305-3994. The examiner can normally be reached on 8:00am - 4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H. Brown can be reached on 703-308-1159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nitin C. Patel
June 29, 2004


LYNNE H. BROWNE
SUPERVISORY PATENT EXAMINER
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